

COMMONWEALTH OF PUERTO RICO
SOUTHWEST LOCAL WORKFORCE DEVELOPMENT BOARD, INC.

NON DISCRIMINATION PUBLIC POLICY

Section 1. The Southwest Local Workforce Development Board, Inc. based on Public Law 113-128, Workforce Innovation and Opportunity Act (WIOA), create Non Discrimination Public Policy.

Section 2. Law References

This law reference provides that no individual shall be excluded from participation in, or be denied the benefits of, employment and training, or employment in the administration of the Southwest Local Workforce Development Area or any organization or program receiving funds under the Federal WIOA Act; or be subjected to discrimination on the basis of race, color, sex, age, national origin, handicap, political affiliation, or religious belief, and in the case of benefit, only citizenship or participation in WIOA-subsidized programs.

In accordance with the provisions of the Federal WIOA Act and its regulations, the Administration of the Southwest Local Labor Development Area and its Single Management Center, adopts this Public Policy to resolve complaints filed for alleged discrimination for the causes established in Section 188 of the Federal WIOA Act.

References:

- Workforce Innovation and Opportunity Act, Section 188 “No Discrimination”.
- Federal Register Section 29 CFR Part 38.

Section 3. DEFINITIONS OF TERMS

- **WIOA** - Federal Law "Workforce Innovation and Opportunities Act of July 22, 2014".
- **Equal Employment Opportunity Officer** - An official designated by the ALDLS, whose responsibility is to monitor the Agency's public policy regarding Equal Employment Opportunity and enforce compliance with the nondiscrimination provisions of the Federal Civil Rights Act of 1964 and the WIOA Act.
- **Administrative Officer** - Outside counsel who will preside and officiate at the formal hearing to elucidate the discrimination complaint.
- **Recipient** - Any entity receiving Federal assistance under any of the titles of WIOA.
- **Applicant** - Person and/or Client seeking services under the WIOA Programs who has filed a completed application and for whom an eligibility determination has been made.

- **Participant** - Client who is determined eligible to participate and who is or will be receiving services under a WIOA Title I program, whether Youth, Adult or Dislocated Worker.
- **Service Provider** - Operator of a program and/or activity contracted by the Southwest Local Labor Development Area to provide services.
- **Complaint** - Any oral and written statement filed by an employee, participant or sub-recipient who believes he or she has been discriminated against for the reasons set forth in Section 188 of WIOA.
- **Complainant** – Customer, mandated partner, service provider, employees, participant and/or person providing or working for WIOA in the programs or subrecipient who understands that he/she has been discriminated against for the reasons set forth in Section 188 of WIOA.
- **Attorney General** - Director Officer of the Civil Rights Commission of the U.S. Department of Justice.
- **Confidential** - Information provided during the investigation of a discrimination case and/or complaint which should be kept as confidential as possible with a fair determination of the matter in question. An employee, participant or recipient whose identity is necessary to discover shall be protected from retaliation..
- **Informative Guides** - Educational materials for participants, service providers and employees that provide information on discrimination and how to file complaints in case it arises.

Section 4. SPECIFIC INSTRUCTIONS

GENERAL RULES

1. The ALDLS Equal Opportunity Officer shall be responsible for directing, accepting and handling complaints filed alleging discrimination in accordance with this Public Policy.
2. Any customer, participant, employee or recipient of WIOA funds who believes that he/she has been discriminated against under Section 188 of the WIOA Act has the right to file a complaint of discrimination with the Equal Employment Opportunity Officer of the Southwest Local Employment Development Area/American Job Center/ALDLS Central Office located at Bo. Hoconuco Carretera 2 Km. 170.0 San Germán, Puerto Rico 00683 or choose to file your complaint directly with the Center for Civil Rights (CDC) at the Federal Department of Labor Room N4123, 200 Constitution Avenue N. W., Washington, DC 20210 (29 CFR 20210), Washington, DC 20210 (29 CFR 38.69).
3. If the complainant decides to file directly with the Center/CDC, the Equal Employment Opportunity Officer will provide and assist the complainant in completing the Complaint Form (ALDLS-OIOE-002), plus the form provided by the Center - CDCR.

Once the forms are completed, they will be sent to the following address:

Federal Center of Civil Rights U.S.

Department of Labor

Room N4123, 200 Constitution Avenue N. W.,

Washington, DC 20210

4. This Public Policy requires that the complaint or discriminatory incident be filed in writing and include the following information required in 29 CFR 38.70:
 - a. Name and address of the complainant.
 - b. The Identity of the Individual or Entity alleged to be responsible for the Act of Discrimination/Identifying the complainant.
 - c. The signature of the complainant or authorized representative (Attorney).
 - d. A description of the acts giving rise to the complaint/Detailed description of the complainant's allegation, showing that:
 - 1) You have the legal capacity to file because you belong to one of the groups protected by Section 188 of the WIOA Act or Federal Laws guaranteeing Equal Employment Opportunity to employees, participants and recipients under these funds.
 - 2) Is receiving or will receive financial assistance at the time of the incident;
 - 3) Is filing the complaint within one hundred eighty (180) days of the alleged discriminatory act.
 - e. This description must be in such a way that it can be determined that the complaint:
 - 1) Falls under the jurisdiction of the Southwest Local Workforce Development Area/American Job Center/ALDLS, or the Center/CDC.
 - 2) Is not time-barred.
 - 3) Has merit.

Section 5. PROCEDURE

A. Filing a complaint with the Equal Opportunity Officer:

At the time the complaint is filed, the Employment Opportunity Officer of the Southwest Local Workforce Development Area/American Job Center/ALDLS will offer the complainant the opportunity to select the method of resolving the complaint, including the Alternative Dispute Resolution (ADR) method, explicit in Section 38.72 (c) of 29 CFR Part 38.

You will be guided on how to help you resolve the complaint as soon as possible by offering you all the options available to the complainant under the IOE Law (Section 38.72). Fact-finding data will be evaluated to investigate the circumstances underlying the complaint.

This Public Policy states that Service Providers are required to comply with the same and its provisions of the Act as set forth in 29 CFR 38.73 of the WIOA Act.

This Public Policy requires the following elements (29 CFR 38.72):

- That a final decision be issued to the complainant within 90 days of the date the complaint or discriminatory act was filed.

- Letter to the complainant certifying receipt of the complaint or discriminatory act and notifying him/her of his/her right to be represented in the complaint process.
- A statement provided to the participant, containing a list of the issues presented in the complaint and, for each issue, a statement specifying whether the entity accepts the issue for investigation or rejects it and the reason for each rejection.
- A period for fact-finding or investigation of the circumstances underlying the complaint.
- A period during which the entity attempts to resolve the complaint. The methods available to resolve a complaint must include an Alternative Dispute Resolution (ADR) method, explicit in Section 38.72 (c) of 29 CFR Part 38.
- A final written determination must be provided to the complainant within 90 days of the date the complaint was filed, indicating, for each matter presented:
 - A statement of the subrecipient's decision on the matter and an explanation of the reasons underlying the decision made, or a description of the manner in which the parties resolved the matter.
 - A notice that the complainant has the right to file a complaint with the Federal Civil Rights Center/CDCF, within 30 days from the date of the final determination, if the complainant is dissatisfied with the agency's decision.
- This Public provides the opportunity to notify the complainant of his or her right to file a grievance with the Civil Rights Center/CDC if the subgrantee/ALDLS fails to issue a final determination (if unresolved) within the required 90 days (29 CFR 38.76).
- 1. If the complaint is filed with the Equal Opportunity Officer, Southwest Local Workforce Development Area/American Job Center/ALDLS, Central Office:
 - a. It will receive the written complaint and proceed to prepare a file in the name of the complainant and assign a case number.

If the complaint does not contain sufficient information to identify the respondent or the basis for the alleged discrimination, the timeliness of the complaint, or the apparent merit of the complaint, the Officer should attempt to obtain the necessary information from the complainant, 29 CFR Section 38.79.

The Officer may close the complainant's file, without prejudice, if:

- The Officer makes reasonable efforts to attempt to find the complainant, but is unable to locate the complainant; or
- The complainant fails to provide the necessary information to the Officer within the time specified in the request for more information.

The Officer closes the complainant's file, the Officer must send written notice to the complainant's last known address, email address (or other known method of contacting the complainant in writing).

- b. It will analyze the complainant's allegations to determine:
 - 1) Jurisdiction
 - 2) Merit of the complaint
 - 3) Whether it was filed within the term set forth in Section 4, Article 4 (d)(3).
- c. If the analysis of the complaint shows that it does not have merit as a complaint for discrimination, the Officer shall prepare a report stating the reasons why it is not considered a discriminatory act; shall indicate that the matter was discussed with the complainant and the complainant's agreement with such determination; and shall proceed to close the case.

The complainant will be notified of the right to file a complaint with the Center/CDC. The complainant or his/her representative will be notified to file a complaint with the Center/CDC 30 days after the date on which the complainant receives the notification.
- d. If the complaint has merit, the Officer shall file a report and immediately refer the complaint to the Independent Reviewing Officer for a formal hearing of the case.

B. Hearing before the Independent Reviewing Officer:

- 1. Once the complaint has been received by the Independent Hearing Officer, the Independent Hearing Officer will grant all parties the opportunity for a hearing to be held. The Independent Examiner shall notify the parties of the holding of the formal hearing according to the term established in the Law.
- 2. The notice for the hearing will include the following information:
 - a. Date, time and place of the hearing.
 - b. Purpose of the hearing.
 - c. The desirability of attending the disadvantage of not attending.
 - d. Procedural rights, such as:
 - 1) The right to attend the hearing alone, accompanied and/or represented by an attorney or any other representative of your choice.
 - 2) The right to hear all testimonial evidence and to see all documentary evidence presented at the hearing.
 - 3) The right to examine and cross-examine witnesses and to rebut the evidence presented.
 - 4) The right to present all testimonial and documentary evidence relevant to the complaint.

- 5) The right to have any determination made by the Examining Officer in writing and based on the oral and documentary evidence presented at the hearing.
3. For every hearing held before the Examining Officer there must be a record, whether taken by computer, shorthand, tape recorder, video, by stenotype or other available means, etc.etc.
4. The Hearing Officer shall begin the hearing with a summary of the controversies involved in the complaint and explain the manner in which the hearing will be conducted.
5. The complainant shall initiate the presentation of evidence at the hearing. After the presentation of the complainant's evidence, the respondent shall present its evidence.

The Examining Officer may alter this order, if and when he/she deems it convenient depending on the circumstances of the case.

6. All persons appearing to give evidence at any hearing shall be required to be sworn before the Examining Officer. Once sworn, the witnesses shall leave the courtroom until it is time for each witness to be deposed unless the parties stipulate that the witnesses, or any of them, remain in the courtroom while others are deposed.
7. It will be the responsibility of the Examining Officer to send a copy of the decision to the parties and to the director of the Southwest Local Workforce Development Area/American Job Center/ALDLS and pass it on to the Equal Employment Opportunity Officer, which must contain the following information:
 - a. Date and place where the hearing was held, the parties and witnesses who appeared at the hearing.
 - b. The controversy or controversies that gave rise to the complaint in a clear and concise manner.
 - c. The findings of fact based on the record of the hearing.
 - d. Conclusions of law.
 - e. Determination based on findings of fact and conclusions of law.
 - f. That the decision of the Reviewing Officer, shall be the final decision of the Southwest Local Workforce Development Area.
 - g. Your right to request to the Center/CDC, the review of the Resolution by the Southwest Local Workforce Development Area.
8. The decision or ruling of the Reviewing Officer shall be the final decision of the Southwest Local Workforce Development Area.

9. The complainant has the right to request a review of the complaint if the Southwest Local Workforce Development Area/American Job Center/ALDLS issued a decision.

a. The request for review must be filed within five (5) working days of receipt of the determination from the Southwest Local Workforce Development Area.

b. If a determination is issued and the determination is not satisfactory to the complainant, the complainant or his/her authorized representative may request review before the Center/CDC).

C. Filing with the Center/CDC

1. The complainant or his/her representative may file a complaint with the Center/CDC if the Southwest Local Workforce Development Area or CDC has not issued a resolution or if the resolution issued is not to the complainant's satisfaction.

D. Remedies and/or Sanctions Available

In order to ensure that this Public Policy and under the Law is complied with in all its respective areas, we impose the following Remedies and/or Sanctions applicable to the violator and/or those who incur in acts of discrimination:

As set forth in the WIOA Act, the remedies available to persons who file complaints for violations of Section 188 and 29 CFR 38 Nondiscrimination and Equal Employment Opportunity are:

(A) Suspension or termination of payments under this Act;

(B) Prohibition on placement of a participant for an appropriate period of time in a program under this Act with an employer who has violated section 188 and an appropriate equitable remedy (other than repayment of pay).

In addition to remedies available under paragraph (1), remedies available under this section for violations of section 188 may include:

(A) reinstatement of the grievant to the position occupied by the grievant before the displacement:

(B) payment of lost wages and benefits; and

(C) reinstatement of other relevant terms, conditions, privileges of employment.

E. CANCELLATION OF CASE

If the complaining party wishes to withdraw the complaint, he/she must submit his/her request in writing with detailed reasons justifying it. The document must be signed by the complainant. The Equal Opportunity Officer will terminate the case in relation to the complainant.

However, the Equal Opportunity Officer will determine whether to continue investigating the complaint administratively. If so, upon completion of the investigation, he/she will issue a final report, which will be forwarded to the Administrative Officer and a copy filed in the file. The Administrative Officer will take the corresponding actions.

Section 6. TERMS

1. Discrimination complaints must be filed within one hundred eighty (180) days from the date on which the facts occurred (discriminatory incident), which is the subject of the complaint, unless the CDC extends said period (29 CFR 38.69).
2. The filed complaint shall be resolved within a term that shall not exceed ninety (90) working days from the date the complaint is filed. The complaint must be resolved at the level of the Southwest Local Labor Development Area within thirty (30) days following the filing of the complaint.

If the ninety (90) day period expires and a resolution has not been issued, the complainant or his/her representative (attorney or designee) may file a complaint with the Federal Civil Rights Center/CDCF within thirty (30) days of the expiration of the ninety (90) day period if the complainant was not notified in accordance with the regulations.

3. If the complaint was filed through the Equal Opportunity Officer, you must wait until he/she issues his/her decision or until ninety (90) days have elapsed, whichever comes first, before filing with the Center/CDC.
4. The Independent Reviewing Officer has thirty (30) days after the complaint is filed to hold a formal hearing of the case.
5. The Independent Reviewing Officer must give at least five (5) days' notice of the formal hearing to the parties concerned.
6. The complainant has the right to request a review of the complaint before the Civil Rights Center if he/she does not receive a decision from the Southwest Local Labor Development Area within thirty (30) days of the filing of the complaint or if the resolution issued does not satisfy him/her.
7. If the resolution issued is not to the complainant's satisfaction, the complainant may request a review by the Civil Rights Center/CDC.
8. If the ninety (90) day period expires and the Southwest Local Workforce Development Area or the Council has not issued a resolution to the complainant, the complainant or his/her representative may file the complaint with the Center (CDC) within thirty (30) days from the expiration of the ninety (90) day period, 29 CFR Section 38.76.

The Center may extend the thirty (30) day term if the complainant was not notified in accordance with the regulations or for just cause, 29 CFR Section 38.77.

Section 7. SPECIAL CLAUSES

1. Our Southwest Workforce Development Local Area/American Job Center/ALDLS encourages that records of discrimination complaints to participants, employees and service providers be retained or maintained for a period of not less than 5 years of retention.
2. Each file must remain with all the documents of the matter/complaint, filed and with their respective final actions.
3. The Southwest Workforce Development Local Area/American Job Center/ALDLS, guarantees all possible Reliability and discretion to our clientele and/or participants, etc., who are assisted under the Equal Employment Opportunity and Non-Discrimination Act, under the Workforce Innovation and Opportunity Act/WIOA.
4. There are federal laws relating to personal information submitted to federal agencies, including the Workforce Development Program/PDL or recipient; the Privacy Act of 1974 (5 U.S.C. 552), HIPAA, the Health Insurance Portability and Accountability Act of August 21, 1996, Public Law 104-191, the Freedom of Information Act related to your complaint. After reading the notice, the complainant must sign and return with consent printed on the back of the notice, along with their complaint form.
5. The Privacy Act protects individuals from misuse of personal information held by the Federal Government. The Act applies to records on file that can be located by name, social security number, or other personal identification system.
6. ALDLS and the LDP have been authorized to investigate complaints of discrimination on the basis of race, age, color, religion, sex, national origin, disability, political affiliation, or religious belief in programs receiving Federal funds through the Department of Labor. The LDP or recipient is also authorized to conduct reviews of federally funded programs to assess their compliance with civil rights laws.
7. As a matter of policy the Southwest Local Workforce Development Area/American Job Center/ALDLS will not disclose names or other identifying information about individuals unless it is necessary for purposes of investigation or enforcement activity of a program that has violated the law. ALDLS will never disclose to the program under investigation the identity of the person filing the complaint unless the complainant has first given ALDLS consent to do so.

Section 8. VALIDITY

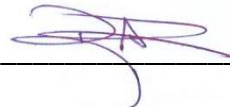
Should any word, clause, article, section or part of this Public Policy be declared unconstitutional or null and void by a court of law, such decision shall not affect, impair or invalidate the remaining provisions and parts of this Public Policy. The nullity or invalidity of any word, clause, sentence, article, section or part of the regulation by judicial determination shall not be understood to affect or impair in any sense its application or validity in any other case.

This Public Policy may be amended at any time at the discretion of the Southwest Local Workforce Development Area/American Job Center/ALDLS, pursuant to Section 188 of WIOA and Federal Regulation 29 CFR 38, in the public interest. This Public Policy shall become effective immediately upon approval.

Section 9. This public policy will become effective immediately upon approval by the Local Board.

Supporting Document: ALDLS-OIOE-002 Rev. January 2021

In San Germán, Puerto Rico, today, August 9, 2022.



Roque Abad Ramírez, WDB Local Board Chairman